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did not know that consequential damages would arise; defendant having assured him that the branding would do no harm.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 212.]

9. Trespass (§ 2*)—Branding Trees by Mistake Trespass Warranting Damages.—Where defendant admitted branding plaintiff's trees by mistake, such evidence alone entitled plaintiff to judgment for some amount, as it was a trespass on plaintiff's land.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 219.]

10. Appeal and Error (§ 1004 (2)*)—Recovery for Injury to Trees Held Not Excessive.—Where there was conflict in the evidence, a recovery of \$400 for cutting 18 trees and branding 135 so that some of them died could not be held excessive by the Supreme Court of Appeals.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 606.]

Error to Circuit Court, Russell County.

Action by one Hayter against the Clinchfield Coal Corporation. Judgment for plaintiff, and defendant brings error. Affirmed.

Morison, Morison & Robertson, of Bristol, *Burns & Kidd*, of Lebanon, and *J. W. Flanagan*, for plaintiff.

S. H. Sutherland, of Clintwood, for defendant.

GILMER v. REDWINE.

Sept. 22, 1921.

[108 S. E. 857.]

1. Convicts (§ 3*)—Statute for Appointment of Committee of Convict's Estate Construed.—Under Code 1919, § 4998, in order to appoint a committee for the estate of a convict, the person must have been convicted of a felony and sentenced to the penitentiary, or to the state convict road force for one year or more, and must possess some estate, real or personal, some portion of which must be within the territory of the court making the commitment, and the motion must be made by an interested party, and on the existence of any of these grounds being challenged, evidence of the existence of the grounds must be furnished.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 357.]

2. Convicts (§ 3*)—Where No Evidence Was Presented on Issues Concerning the Right to Appoint a Committee for a Convict's Estate, the Appointment Was Illegal.—Where the appointment of a committee for the estate of a convict was resisted on the grounds that he had no estate, and that the person moving for the appointment had no interest in committing his estate, the bill of exceptions, reciting that no

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evidence was offered either by the movant or the defendant, shows the appointment of a committee was erroneous.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 357.]

Error to Circuit Court, Scott County.

Proceedings by Bettie Redwine, administrator of S. L. Redwine, deceased, against T. O. Gilmer. From judgment appointing a committee for the estate of said Gilmer, as a convict, he brings error. Reversed.

O. M. Vicars, of Wise, and *S. H. Bond* and *W. H. Nickels*, both of Gate City, for plaintiff in error.

W. S. Cox and *J. P. Corns*, both of Gate City, and *Coleman & Carter*, of Big Stone Gap, for defendant in error.

CHARLES *v.* McCLANAHAN et al.

Sept. 22, 1921.

[108 S. E. 858.]

1. Deeds (§ 94*)—Prior Stipulations Are Merged in the Deed.—In the absence of fraud or mistake in the instrument itself, prior stipulations and understandings are merged in the final and formal deed executed by the parties.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 422.]

2. Reformation of Instruments (§ 17 (1)*)—Grantee Held Not Entitled to Have Mineral Reservation Stricken from Deed.—Where a deed expressly reserved one-half of the minerals, the grantee, accepting the deed with knowledge of the reservation, was not entitled to have the deed reformed by striking the reservation on the theory that the grantor intended to sell and he intended to buy the entire interest of the grantor in the land.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 903.]

3. Reformation of Instruments (§ 17 (1)*)—Grantor Not Entitled to Reformation of Deed Reserving One-Half of the Minerals So as to Reserve All.—Where grantor reserved one-half the minerals under the mistaken belief that he owned one-half only, he was not entitled to reform the deed; the reservation as made representing the agreement of the parties when made.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 905.]

4. Quieting Title (§ 7 (2)*)—Grantee's Deed Omitting Mineral Reservation Held Cloud on Grantor's Title.—Where land was conveyed by deed reserving one-half the minerals, and the grantee in turn conveyed by deed without reservation, such deed constituted a cloud on

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